

In the Matter of)
)
 Rules and Regulations Implementing the)
 Telephone Consumer Protection Act of 1991) CG Docket No. 02-278

Great Lakes Higher Education Corp. (“Great Lakes”); Navient Corp. (“Navient”); Nelnet, Inc. (“Nelnet”); the Pennsylvania Higher Education Assistance Agency (“PHEAA”); and the Student Loan Servicing Alliance (“SLSA”) respectfully submit this Consolidated Reply to the Oppositions filed by the National Consumer Law Center *et al.* (“NCLC”) and Consumers Union (“CU”) in the above-captioned proceeding.¹

¹ See NCLC *et al.*, Opposition to Petition for Reconsideration, CG Docket No. 02-278 (Feb. 1, 2017) (“NCLC Opposition”); Letter from Maureen Mahoney, Policy Analyst, CU, CG Docket No. 02-278 (Feb. 1, 2017) (“CU Opposition”).

³ Great Lakes *et al.*, Petition for Reconsideration, CG Docket No. 02-278 (Dec. 16, 2016) (“Petition”).

I. THE RECORD CONTINUES TO DEMONSTRATE THAT THE FCC ERRED IN LIMITING CALLS TO THREE ATTEMPTS PER 30 DAYS.

We and other commenters emphasized throughout this proceeding that a decision to allow only three call attempts per 30 days lacks any rational basis and will stymie borrower contact. This limit is unduly restrictive and impedes compliance with many other regulatory calling requirements.⁴ Ample empirical evidence – from both calling parties and other federal agencies – highlights the need for a substantially higher limit.⁵ The Department of Education warned that the FCC’s proposal “would not afford borrowers sufficient opportunity to be presented with options.”⁶ And the Consumer Financial Protection Bureau (“CFPB”) proposed to allow far more frequent calling in its debt collection rulemaking.⁷ Despite this incredibly one-sided record, the FCC arbitrarily adopted a three-call attempt limit.

A. New Data Provides Additional Support for a Higher Call Limit.

New data submitted after the *Order’s* adoption highlights further that borrowers will benefit from additional calls. For example, the Education Financial Council (“EFC”) shared the results of a poll among its members to determine the effectiveness of live contact.⁸ It found that live contact with a student loan borrower led to the resolution of a delinquency 80% of the time, with individual success rates ranging from 63% to 92%.⁹ Most often, it took only two calendar days to resolve a delinquency once live contact had been established, and 92% of resolutions occurred within 30 calendar days after live contact.¹⁰

⁴ The Department of Education (“Department”) and other federal agencies require more than three calls per 30 days to certain borrowers. *See, e.g., Order*, O’Rielly Dissent, Attach.

⁵ *See, e.g.,* Petition at 4-6.

⁶ Letter from Ted Mitchell, Undersecretary, the Department, CG Docket No. 02-278, at 4 (July 11, 2016).

⁷ *See* CFPB, Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered (July 28, 2016) (“CFPB Proposal”).

⁸ Letter from Debra J. Chromy, President, EFC, CG Docket No. 02-278 (Feb. 1, 2017) (“EFC Letter”).

⁹ *Id.* at 2.

¹⁰ *Id.* at 2.

Additionally, the CFPB Student Loan Ombudsman released an annual report on October 17, 2016, that recommended “[s]trengthening borrower communications during the rehabilitation-to-IDR [income-driven repayment] transition.”¹¹ The report explains that current outreach efforts “may be insufficient to assist a substantial share of borrowers navigating the default-to-IDR transition.”¹² It also indicates that policymakers and market participants “should consider immediate action to improve borrower communication,” especially with regard to “at risk” borrowers, such as those with previously-defaulted loans.”¹³ Like EFC’s new data, this CFPB report shows that additional outreach can help borrowers navigate an increasingly complex student loan landscape. The grateful consumer statements in the attached Exhibit are evidence of the benefits of outreach by student loan servicers.

B. NCLC Mischaracterizes and Ignores Data in the Record.

NCLC mischaracterizes Nelnet’s data, which shows that ten call attempts per month leads to 42% more live contacts than three calls per month.¹⁴ Contrary to the unjustified “harassment” NCLC describes, these additional calls are vital to reaching many federal student loan borrowers before it is too late.¹⁵ In fact, the record shows that a quarter of federal student loan borrowers must be called more than three times per month to be reached during their first year of delinquency. For example, Navient’s data show that 25% of delinquent federal student loan borrowers require 40 or more call attempts to establish a live contact.¹⁶ These borrowers would take more than 13 months to reach under the FCC’s current rules, at which point they

¹¹ See CFPB, Annual Report of the CFPB Student Loan Ombudsman (Oct. 2016), <http://bit.ly/2kJFtCh>.

¹² See *id.* at 46.

¹³ See *id.* at 47-48.

¹⁴ See Nelnet Comments at 14. Unless otherwise indicated, all of the comments and reply comments cited were filed in CG Docket No. 02-278 during June 2016.

¹⁵ See NCLC Opposition at 12-13. Nelnet proposed 10 calls per month because every additional monthly attempt creates a valuable opportunity to resolve delinquencies. Its data shows that attempting up to 10 calls per month yields a 415% increase in delinquency resolutions.

¹⁶ See Navient Comments at 42-43.

would have already defaulted on their student loans.¹⁷

NCLC also incorrectly dismisses the value of the additional live contacts. Using EFC's data, attempting ten calls per 30 days rather than three leads to a 42% increase in live contacts,¹⁸ and the vast majority of live contacts—80%—lead to the resolution of a delinquency. Nelnet, for example, estimates that attempting ten calls per 30 days instead of three calls would help an additional 389,000 of its borrowers resolve delinquencies each year. This number does **not** include those whose federal student loans are serviced by others, such as Great Lakes, Navient, or PHEAA. The FCC should not close off a vital door to federal assistance to such borrowers or keep the government from recovering its debts.

Indeed, even leaving a voice mail can be less effective than live contact. Many student borrowers do not set up voice mail, let alone use it. As a New York Times article observed, “[t]he concept of leaving (and checking) voice mail is, to millennials, as obsolete as swing-dancing and playing NHL ’94 on Sega Genesis. That red number on their iPhones announcing how many voice mail messages are waiting? Ignored. The recording? Instantly deleted.”¹⁹ Nelnet's data illustrates this. It shows that live contact helps resolve delinquencies within two days 98% of the time, compared to 2.1% of the time for voice mails.

C. NCLC Inappropriately Marginalizes the CFPB's Debt Collection Proposals.

The limits proposed by the CFPB in its debt collection rulemaking, which allow up to six calls per week, are far less restrictive than the limits the FCC adopted for federal debt servicing

¹⁷ See, e.g., Navient Comments at 6-7 (explaining that such loans default after 260 days of non-payment).

¹⁸ Some EFC members report even greater success. See EFC Letter at 2. Similarly, Navient resolves delinquencies more than 90% of the time it has a live conversation. See, e.g., Navient Comments at 8.

¹⁹ Teddy Wayne, *At the Tone, Leave a What?*, N.Y. TIMES (June 13, 2014), <http://nyti.ms/2194V3R>. See also, e.g., Caitly Weaver, *Modern Mobile Etiquette: Don't Leave Me a Voicemail Unless You're Dying*, GAWKER (Mar. 12, 2014), <http://bit.ly/2lzcwtL>; Rachel Rood, *Please Do Not Leave a Message: Why Millennials Hate Voice Mail*, NPR (Oct. 23, 2014), <http://n.pr/1K6lDpK>.

calls.²⁰ NCLC erroneously seeks to cast this as irrelevant.²¹ Like the FCC, the CFPB seeks to balance consumers' interests in minimizing calls and callers' competing interests "in being able to make the repeated contact attempts often necessary to establish confirmed consumer contact and collect debts."²² Moreover, the CFPB did not propose to treat autodialed or prerecorded calls differently than other types of calls, which suggests that it does not view them as posing a unique threat to consumers. In fact, even NCLC did not make this distinction in June 2015 when it recommended allowing up to three debt collection calls per week (*i.e.*, approximately 12 calls per month),²³ and it has never explained its inconsistent position.

D. NCLC Grossly Mischaracterizes the Potential Impact to Low-Income Consumers.

NCLC suggests that granting the Petition would harm low-income consumers, claiming that a "flood of unwanted calls would be devastating for households struggling to afford essential telephone service."²⁴ Its fears are unfounded. NCLC offers no evidence that federal student loan calls are, or would be, a burden for low-income consumers. If anything, the additional outreach would be a boon to low-income borrowers, who are at greatest risk of default and significantly more likely to be able to be reached only on a cell phone.²⁵ Moreover, no charges would normally occur from missed or unanswered calls, and borrowers would be able to stop the calls at any point under the FCC's current rules.²⁶ NCLC's rhetoric does not match the data.

II. THE EXEMPTION MUST INCLUDE CALLS TO INDIVIDUALS OTHER THAN BORROWERS TO EFFECTUATE CONGRESS'S INTENT.

²⁰ See CFPB Proposal at 26.

²¹ See NCLC Opposition at 11-12.

²² CFPB Proposal at 26.

²³ April Kuenhnoff & Margot Saunders, NCLC, Debt Collection Communications: Protecting Communications in the Digital Age, at 4 (June 2015), <http://bit.ly/1LQxpDK>.

²⁴ See NCLC Opposition at 17.

²⁵ See, *e.g.*, Navient Comments at 24-28.

²⁶ See, *e.g.*, Order ¶ 40.

The majority of commenters agree that the exemption must apply to calls to individuals other than the borrower to have any effect.²⁷ Calls placed to a number that a borrower provides on her application are (absent instructions to the contrary) calls for which the lender has prior express consent and does not need an exemption.²⁸ Calls to numbers the caller did not know were reassigned; wrong number calls; and calls to friends, family, or references to locate the borrower logically are “made solely to collect a debt owed to or guaranteed by the United States” and the ones most in need of an exemption.

We agree with NCLC that a reassigned number database could help callers avoid calls to reassigned wireless numbers.²⁹ But, as the FCC has acknowledged, no such database exists,³⁰ and callers currently do not have a viable means to entirely avoid calling reassigned numbers. Moreover, the potential for such calls may be higher in the student loan context, given the long time that may pass from when a student obtains a federal loan until repayment. Simply put, rules regarding reassigned numbers have nothing to do with the “number” and “duration” of exempt calls. Thus, allowing calls to reassigned numbers under the exemption is critical.

NCLC and CU also claim that the exemption should not apply to any calls to family and friends of the borrower.³¹ Contrary to NCLC’s argument, however, these calls are calls “solely to collect a debt” and fall within the exemption.³² NCLC’s claim regarding the meaning of the word “solely” simply does not withstand scrutiny. The plain language of the amended TCPA

²⁷ See, e.g., College Foundation, Inc., Comments, at 2 (Feb. 3, 2017); Educational Credit Management Corp., Comments, at 10-11 (Feb. 1, 2017) (“ECMC Petition Comments”); Am. Bankers Ass’n and Consumers Bankers Ass’n, Comments, at 3-4 (Feb. 10, 2017) (“ABA/CBA Petition Comments”).

²⁸ See Petition for Reconsideration at 13; ECMC Petition Comments at 13.

²⁹ NCLC Opposition at 16-17.

³⁰ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 31 FCC Rcd 7961 ¶ 86 (2015).

³¹ See CU Opposition at 3; NCLC Comments at 9, 12.

³² *Contra* NCLC Comments at 2-3.

makes clear that it applies based on the purpose of a call, and not on the number dialed.³³

Moreover, federal student loan regulations require callers to “diligently attempt” skip-tracing efforts and reach out to “each endorser, relative, reference, individual, and entity, identified in the borrower’s loan file.”³⁴ If the FCC is to give meaning to the exemption and facilitate federal debt servicing calls, it must apply the exemption to calls to individuals other than the borrower.

Finally, contrary to NCLC’s claims, allowing calls to non-borrowers would not “unleash a tsunami of robocalls on non-debtors.”³⁵ Loan servicers benefit only from calls that directly further the goal of debt collection. They simply have no incentive to randomly or repeatedly place calls to non-borrowers. Navient, for example, typically will call references listed on a borrower’s application only when it does not have current contact information for the borrower, which is the case for fewer than 10% of its federal student loan borrowers.

III. NO PARTY EVEN ATTEMPTS TO DEFEND THE FCC’S INTERPRETATION OF ITS JURISDICTION UNDER THE EXEMPTION.

Tellingly, no party even attempts to defend the FCC’s interpretation of its jurisdiction under the amended TCPA. As Chairman Pai explained last year, and we and Commissioner O’Rielly have reiterated, this interpretation “is unlawful and makes a dog’s breakfast of the TCPA.”³⁶ It cannot be squared with the statute’s text.³⁷ It contradicts Congress’s intent.³⁸ It also leads to absurd consequences and ignores sovereign immunity.³⁹

The majority of commenters agree that the FCC also exceeded its authority by adopting

³³ NCHER, Comments, CG Docket No. 02-278, at 5-6 (Feb. 1, 2017) (“NCHER Petition Comments”).

³⁴ 34 C.F.R. § 682.411(h); *see also* ECMC Petition Comments at 8-9.

³⁵ *Contra* NCLC Opposition at 13.

³⁶ *Order*, Pai Dissent; *see also Order*, O’Rielly Dissent; Petition at 16-21.

³⁷ *See* Petition at 16-18.

³⁸ *See id.* at 18-19.

³⁹ *See id.* at 19-21.

limits beyond the “number” and “duration” of exempt calls.⁴⁰ CU appears to disagree but does not explain why. It merely states that the new rules are “consistent with the intent of the TCPA and Section 301.”⁴¹ Meanwhile, NCLC suggests that the FCC has essentially boundless authority to limit federal debt collection calls because Section 301 of the Budget Act instructs it to prescribe regulations without expressly mentioning “number” or “duration.”⁴² This position treats Section 301 as an independent grant of authority instead of what it really is: direction on how to use the authority conferred by Section 227(B)(2)(H).⁴³ NCLC also misrepresents the FCC’s decision as deliberately limiting things other than call “number” and “duration.” The *Order* itself, however, plainly states that the FCC views the rules as limiting only the “number” and “duration” of federal debt collection calls.⁴⁴

The FCC can also reconsider the *Order* without revisiting the *Broadnet Ruling*.⁴⁵ The two are not “inextricably linked,” as NCLC contends.⁴⁶ Not every call “to collect a debt owed to or guaranteed by the United States” is placed by the federal government or its contractors, as NCLC claims.⁴⁷ Also, even if a federal contractor places a call, it may not be acting as the government’s agent, a key requirement of the *Broadnet Ruling*. For this and other reasons,

⁴⁰ See, e.g., NCHER Petition Comments at 6; ECMC Petition Comments at 1-16; ABA/CBA Petition Comments at 4; ACA International, Reply Comments, CG Docket No. 02-278, at 2-5 (Feb. 13, 2017).

⁴¹ CU Opposition at 1.

⁴² See NCLC Opposition at 10-11.

⁴³ See 47 U.S.C. § 227(b)(2)(H).

⁴⁴ See, e.g., *Order* ¶¶ 1-2, 5, 10, 30-49, 61.

⁴⁵ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, Declaratory Ruling, 31 FCC Rcd 7394 (2016) (“*Broadnet Ruling*”). Congress’ amendment did not change the definition of “person” under the TCPA and is not inconsistent with the *Broadnet Ruling* or *Campbell-Ewald*, 136 S. Ct. 663 (2016). Congress did not, as the FCC suggested, provide a mechanism to regulate non-persons under the TCPA by shifting the focus of the restrictions on the type of calls being placed rather than the person or entity placing the call. Indeed, the TCPA and Budget Act amendments could and should easily be harmonized by recognizing that many federal debt collection calls are made by entities and individuals other than the federal government or a federal government contractor.

⁴⁶ See NCLC Opposition at 3.

⁴⁷ See *id.* at 24.

Congress could have exempted federal debt collection calls even if federal contractors are not “persons” under the TCPA. The FCC itself even made this point, explaining that the *Broadnet Ruling* “does not mean that Congress’ recent decision to except [federal debt collection] calls . . . was unnecessary.”⁴⁸ Although NCLC wants its petition for reconsideration to be addressed,⁴⁹ the FCC simply does not need to do so here.

IV. MANY OF NCLC’S AND CU’S CONCERNS ARE UNRELATED TO STUDENT LOAN CALLS.

NCLC and CU improperly focus on concerns that are unrelated to the calls at issue here. Their oppositions use “robocall” as a catch-all to describe any call that is allegedly disliked, without regard for the purpose or source of the call.⁵⁰ For example, CU attached to its filing dozens of example complaints about calls to sell products, seek charitable donations, or promote pyramid schemes – all unrelated to federal debt collection.⁵¹ CU and NCLC thus conflate calls by scammers and unwanted telemarketing calls, which Congress passed the TCPA to protect against, with calls placed by student loan servicers and others to collect federal debt, which Congress passed a targeted exemption to protect (alongside emergency calls).

Congress and the majority of commenters agree that calls to collect federal student loan debt differ categorically from scam or telemarketing calls. Indeed, Congress specifically sought to facilitate calls to collect federal debt, much of which consists of student loan debt.⁵² Congress

⁴⁸ See *Broadnet Ruling* ¶ 21 n.96.

⁴⁹ See NCLC *et al.*, Petition for Reconsideration, CG Docket No 02-278 (July 26, 2016).

⁵⁰ NCLC has repeatedly labeled all unwanted calls “robocalls.” See, e.g., Testimony before the Senate Committee on Commerce, Science & Transportation, by Margot Freeman Saunders, NCLC, at 2-3 (May 18, 2016), <http://bit.ly/2ltKY4L> (conflating robocalls with telemarketing calls by claiming that 298,000 robocall complaints were filed per month with the Federal Trade Commission in 2015).

⁵¹ Examples include: “None of our robocall [sic] are for debts” and “One calls every Saturday morning to tell me they want me to join a pyramid scheme. Others try to sell me things or get me to donate.” CU Opposition, Attach. 3.

⁵² Federal student loan debt constitutes a majority of U.S. non-tax debt. See Navient Comments at 16-17.

thus recognized the value of enabling live contact to both the government and borrowers.⁵³ If a lender cannot reach a borrower, it cannot determine the best way to help the borrower and provide appropriate deferment or repayment options.⁵⁴ And the benefits to borrowers increase when callers can reach borrowers on their cell phones.⁵⁵

Even NCLC acknowledges the benefits of live contact with student loan borrowers, stating that it does not “dispute that calling customers repeatedly is likely to push more of them to make payments on their debts [or] informing consumers about their options to repay federal loans can provide them with important information.”⁵⁶ It is important to distinguish between (and not conflate, as the oppositions do) calls placed to collect a federal debt – especially calls related to student loan debt – from telemarketing or scam calls. The approach we recommend will in no way incentivize scammers or unwanted telemarketing calls. Meanwhile, many of NCLC’s characterizations of federal student loan servicers are disingenuous and have been rebutted elsewhere in this proceeding.⁵⁷

V. CONCLUSION.

The FCC’s rules hamstringing student loan servicers and keep borrowers from information they need to repay their federal student loans. These rules also exceed the FCC’s authority and contradict both Congress’s intent and the record of this proceeding. We respectfully request that the FCC dismiss NCLC’s and CU’s Oppositions and reconsider the *Order* as set forth in our Petition and this Consolidated Reply.

⁵³ See ECMC Petition Comments at 9; ABA/CBA Petition Comments at 2 (recommending that the FCC allow “the full range of communication strategies that the Federal government itself would undertake.”).

⁵⁴ Petition for Reconsideration at 7; *see also*, e.g., EFC Comments at 2.

⁵⁵ *See*, e.g., EFC Comments at 2.

⁵⁶ NCLC Opposition at 8.

⁵⁷ *Compare*, e.g., NCLC Opposition at 20-23, *with* Navient, Reply Comments at 8-9, 14-15, 21.

Respectfully submitted,

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February 13, 2017

Exhibit
Student Loan Borrower Feedback



Kristin Joy Swartz-
@kjschwartzle

 Follow

[@MyGreatLakes](#) is an incredibly helpful and cooperative loan servicer. I'm always grateful after dealing with them, no matter the medium.

5:43 PM · 24 Oct 2016



Robin Davis
@RMD722



 Follow

Talked to a real person on the phone today about my loans and I feel better about it! Thanks [@Navient](#) for your assistance!

LIKE

1



2:30 PM - 27 Oct 2016



Kailea Rose
@Kailea_Rose

 Follow

Thank you [@Nelnet](#) for actually working with me on my student loans. Sincerely, a very poor college grad



Celine Natalie
@CelineNatalie

 Follow



@Navient your employee Anthony just basically spent an hour on the phone with me, going above and beyond. Super helpful, couldn't be happier

Mandy Medbourn
@MandyMedbourn

 Follow



@MyGreatLakes Haha wow a reply! This made my day. I actually really love Great Lakes and brag on how easy & helpful you are! Thank you!



Sarah ✨
@honeeybits

 Follow



every time I've called nelnet everyone is so nice and helpful ;___; making the process of paying huge loans off way less stressful thank you



tara.
@taraasaurusrex



 Follow

i literally am crying from relief and joy thanks to the lovely @Navient rep that just helped me get on the correct repayment plan THANK YOU

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2017, a true and correct copy of the foregoing Consolidated Reply was provided via first class mail and electronic mail to each of the following:

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